

29

APR 25 2001

Michael N. Milby
Clerk of Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

RAQUEL O. RODRIGUEZ
AND JOSE L. RODRIGUEZ

VS.

RIDDELL SPORTS, INC. \$
RIDDELL, INC. \$
ALL AMERICAN SPORTS CORPORATION \$
D/B/A RIDDELL/ALL AMERICAN \$
AND CHRIS HOODMAN \$

~~~~~

CIVIL ACTION NO. B-CV-96-177

RIDDELL INC.'S MOTION IN LIMINE TO EXCLUDE "BETTER" TESTIMONY  
AND TO PROHIBIT STALNAKER FROM TESTIFYING ABOUT CUSTOMS  
OF THE FOOTBALL HELMET INDUSTRY

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Defendant's Riddell Inc. and All American and files this their motion  
in limine to exclude "better" testimony And to prohibit Dr. Richard L. Stalnaker from  
testifying about customs of the football helmet industry and for such says as follows:

1.

Throughout the first trial of this case, counsel for Plaintiff, the Court and Plaintiff's witness Dr. Richard L. Stalnaker asked or responded to questions regarding "better" design alternatives, "better" test results, "better" padding, etc. Such questioning and responses are not relevant to whether the design of the VSR-4 was defective and unreasonably dangerous as defined by the substantive law of State of Texas and will not suffice as a basis of liability, further it is confusing and misleading to the jury. Henderson v. Ford Motor Co., 519, S.W.2d, 87 (Tex. 1975). "The manufacturer is not changed by the law...to design every part to be the best that science can produce..." Id. at 93; a designer is not obligated to design the safest possible product, or one as soft

as others, or a safer product than the one designed. Bell Helicopter Co. vs. Bradshaw, 594 S.W. 2d 519 (Tex.App-Corpus Christi 1979)

The fact that a manufacturer might have designed a better, safer product does not necessarily mean that the product he did design was unreasonably dangerous. Dabeko vs. Hiel Co., 681, F2d, 445 (5<sup>th</sup> Circuit, 1982).

## II.

Stalnaker during the first trial of this case opined: SF367-368: "I think 8% is too high. I don't know somebody else may accept a 5% risk that is the company's job. SF370: "Most companies have a safety factor built in...good companies get one - Better companies get others. SF370-371: Dr. Stalnaker used an example of auto companies - they don't allow it to be closer than 20%. There has no predicate to establish Stalnaker has knowledge of the customs and practices in the football helmet industry. In fact, he no experience or knowledge f the football helmet industry and has never worked for or been consulted by a football helmet manufacturer. Custom or usage in the automotive industry is not relevant to that of football equipment manufacturers. Stalnaker's testimony in this area is sheer speculation. Further, such testimony is likely to confuse and mislead the jury to the prejudice of Defendants.

Such testimony is therefore not only irrelevant but is misleading and confusing to the jury and is prejudicial to Defendants.

Wherefore, considered Defendant Riddell Inc. moves the court to grant it's Motion in Limine and that the witness Stalnaker be so instructed.

Respectfully submitted,



Robert L. Guerra  
State Bar No. 08578560  
THORNTON, SUMMERS, BIECHLIN,  
DUNHAM & BROWN, L.C.  
418 E. Dove  
McAllen, Texas 78504  
956-630-3080 Telephone  
956-630-0189 Facsimile

ROBERT B. SUMMERS & ASSOCIATES  
P. O. Box 398  
Llano, Texas 78643  
(915) 248-0033-Phone  
(915) 248-0110-Fax

BY Robert. Summers  
ROBERT B. SUMMERS  
State Bar No. 19507000  
ANN H. MEGEE  
State Bar No. 13902700  
Attorneys for Defendants

**CERTIFICATE OF CONFERENCE**

This is to certify that I had a conference with Plaintiffs' counsel, Rex Blackburn,  
and he 25th to agree to this motion.

Robert Summers  
Robert Summers

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above was forwarded by  
telefax transmission and certified mail, return receipt requested to counsel of record on  
this the 25th day of April, 2001.

Mr. Rex Blackburn  
**EVANS, KEANE L.L.P.**  
1101 W. River Street, Suite 200  
P.O. Box 959  
Boise, Idaho 83701-0959  
VIA FAX 208-345-3514  
Telephone 208-384-1800

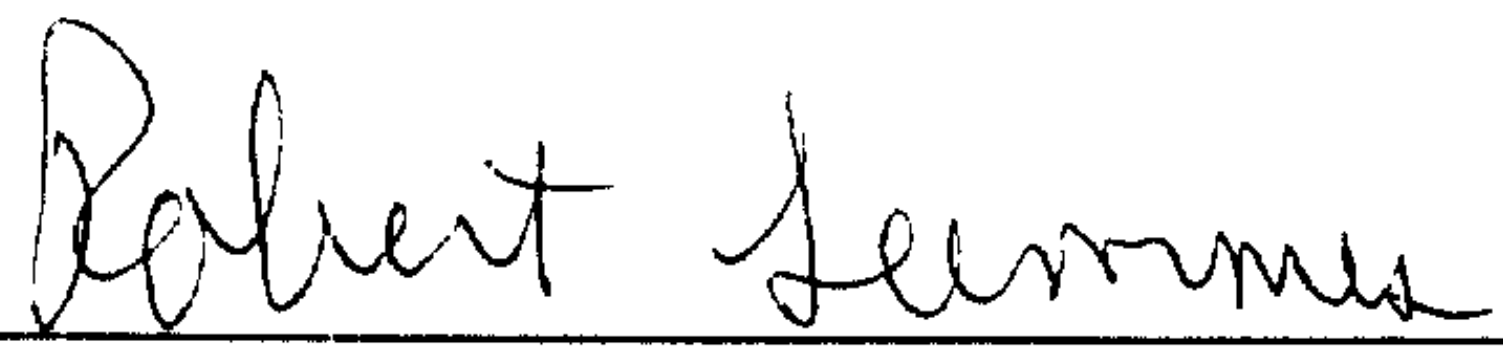
Mr. Mark D. Kamitomo  
**THE MARKAM GROUP, INC., P.S.**

421 West Riverside, Suite 1060  
Spokane, WA 99201  
VIA FAX 509-747-1993  
Telephone 509-747-0902

Mr. J. Arnold Aguilar  
1200 Central Blvd.  
Artemis Square, Suite H-2  
Brownsville, TX 78520  
VIA FAX 956-504-1408  
Telephone 956-504-1100

Mr. Mark T. Curry  
**HUGHES, WATTERS & ASKANASE, LLP**  
1415 Louisiana, 37th Floor  
Houston, Texas 77002  
VIA FAX 713/759-6834  
Telephone 713-759-0818

Mr. Ramon Esparza  
Renfro, Faulk & Blakemore  
185 Ruben M. Torres, Sr. Blvd.  
Brownsville, TX 78520  
via fax 956-541-9695  
telephone 956-541-9600

  
\_\_\_\_\_  
Robert Summers